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06/07/2005

Steve Townsend

42242

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38505

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01/28/2010

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EXAMINER

OMGBA, ESSAMA

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Response to Arguments***

1. Applicant's arguments filed January 12, 2010 have been fully considered but they are not persuasive.

In response to Applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

In response to Applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to Applicant's argument that most of the references except two are nonanalogous art, it has been held that a prior art reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, all the cited references are concerned with inspection and repair of an article. It has been held that in an obviousness analysis, it is not necessary

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to find precise teachings in the prior art directed to the specific subject matter claimed because inferences and creative steps that a person of ordinary skill in the art would employ can be taken into account. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). If a technique has been used to improve one process, and a person of ordinary skill in the art would recognize that it would improve similar processes in the same way, using the technique is obvious unless its actual application is beyond his or her skill. See *Id.* at 417. One of ordinary skill in the art is presumed to have skills apart from what the prior art references explicitly say. See *In re Sovish*, 769 F.2d 738, 743 (Fed. Cir. 1985). “A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 421.

In response to Applicant’s argument that Carew is directed to mapping the surface morphology of an object, the examiner submits that Carew is only used to show that it is known to map an object in a repair process. The features, dimensions and topography are taught by the other references used in the rejections.

In view of the above remarks, the examiner maintains that a *prima facie* case of obviousness has been established in the instant application as outlined in the last Office action.

### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Essama Omgba whose telephone number is (571) 272-4532. The examiner can normally be reached on M-F 9-6:30, 1st Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Essama Omgba/  
Primary Examiner, Art Unit 3726

eo  
January 26, 2010